

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15755 of Andrea Cannon, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to increase an existing child development center from 13 to 28 children ages infant to 14 years and to increase staff from two to four on the first floor in an R-5-A District at premises 541 Newcomb Street, S.E. (Square 5985, Lot 818).

HEARING DATE: November 18, 1992
DECISION DATE: December 2, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The site is located on the west side of Newcomb Street between 5th and Portland Streets S.E., and is known as premises 541 Newcomb Street, S.E. It is zoned R-5-A.

2. The property is slightly irregular in shape with a width of 34 feet along Newcomb Street and a depth of 100 feet along its northern property line and 86.5 feet along the southern property line. The adjacent property at 549 Newcomb Street encroaches over a small triangular portion of the subject site at its southeast corner adjacent to a 15-foot wide public alley at the rear of the site.

3. The property is improved with a two-story, brick, four-unit apartment building. The existing structure currently is occupied by one residential tenant on the second floor and an existing child development center on the first floor.

4. The area surrounding the subject site is primarily developed with small apartment buildings and single family row dwellings. Saint Elizabeths Hospital is located approximately three blocks north of the subject site.

5. The R-5-A District permits matter of right single family detached and semi-detached dwellings, as well as flats, rowhouses and apartment buildings subject to Board approval. The use of the property for a child development center with more than 15 children is permitted as a special exception with Board approval, subject to the following criteria:

- a. The center shall be capable of meeting all applicable code and licensing requirements.

- b. The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children.
 - c. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.
 - d. The center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.
 - e. The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it shall deem necessary to protect adjacent and nearby properties.
 - f. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself.
 - g. The Board may approve more than one child development center in a square or within one thousand feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.
 - h. Before taking final action on an application for use as a child development center, the Board shall submit the application to the D.C. Department of Public Works and Human Services, and the D.C. Office of Planning for review and written reports.
 - i. The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District.
6. The existing child development center occupies one first-floor unit and has a capacity of 13 children, two to 14 years of age, with two staff persons. There are no other child development centers within the subject square or within 1,000 feet of the subject site.

7. The applicant proposes to extend the existing child development center to occupy the entire first floor and to increase the number of children to 28, aged infant to 14 years, with four staff persons.

8. The hours of operation of the child development center would be from 6:00 a.m. to 6:00 p.m., Monday through Friday.

9. Two outdoor play areas are located on the subject site in the front and rear yards. The play area in the rear yard contains outdoor play equipment such as swings and sandboxes. Both play areas are fenced. Currently all the children play outdoors at the same time. The applicant proposes to stagger the number of children outdoors at any given time after the proposed expansion. Children are supervised by staff at all times. The applicant proposes to use the existing on-site play areas.

10. The Zoning Regulations require the provision of one on-site parking space for each four employees or staff. The applicant proposes to provide two on-site parking spaces at the rear of the property accessed from the 15-foot wide public alley. The applicant testified that she is the only person who utilizes on-site parking at the subject premises at present and that there is adequate on-street parking to accommodate the needs of visitors to the site.

11. The applicant testified that the majority of the children enrolled at the child development center live in the immediate area and arrive at the site by way of public transportation or are walked to the site by their parents. The few parents who drive to the site, park on the street in front of the facility and escort the children to and from the facility. A staff member is available to escort the children to and from the facility as needed. Arrival and departure times are staggered during peak hours.

12. The applicant testified that since her purchase of the site, the existing building has been renovated and the visual appearance of the area has been enhanced.

13. The Office of Planning (OP), by memorandum dated November 10, 1992 and by representative at the public hearing, recommended conditional approval of the application. The OP was of the opinion that the applicant has met the requisite burden of proof necessary for the granting of the requested special exception relief. The OP noted that the subject premises have been used for a child development center for 13 children since April 1992 without any apparent negative impacts on the neighborhood. The OP was further of the opinion that the proposed increase in enrollment to 28 children and four staff would not have an adverse impact on the surrounding area if approval is conditioned as follows:

- a. Approval shall be for a period of FIVE YEARS.
- b. Operation of the facility shall be limited to the applicant.
- c. Enrollment shall be limited to a maximum of 28 children.
- d. The maximum number of employees shall not exceed four individuals.
- e. The hours and days of operation shall not exceed from 6:00 a.m. to 6:00 p.m., Monday through Friday.
- f. A staff person shall assist in the drop-off and pick-up of children by escorting the children to and from the facility when not accompanied by parents or guardians.

14. The Service Facility Regulation Administration of the D.C. Department of Consumer and Regulatory Affairs, by memorandum received on September 11, 1992, indicated that the proposed child development center meets the requirements of DCMR 29, Chapter 3, Public Welfare.

15. By letter dated October 13, 1992, the Metropolitan Police Department (MPD) offered no opposition to the granting of the application. Based on its review of the application, the MPD was of the opinion that the project would not affect the public safety in the immediate area or generate an increase in the level of police services currently provided. The MPD noted that the center has been in operation since April 1992 that the physical security measures for the site include a front and rear fence around the premises, child proof doors which are locked from inside, adequate supervision and lighting, and offstreet parking.

16. By memorandum dated October 22, 1992, the D.C. Fire Chief offered no objection to the granting of the application. The Fire Chief noted that fire and life safety features required by city codes such as fire alarms, sprinkler systems, standpipe systems, exits, fire rated separations, fire extinguishers, etc. shall be determined during the plan review process as part of the building permit application review.

17. By letter dated November 10, 1992 and by representative at the public hearing, Advisory Neighborhood Commission (ANC) 8C opposed the granting of the application. The ANC's opposition was based on the following:

- a. The added population would cause parking problems.
- b. The proposed additional number of children would have a negative impact on the residential character of the area.

- c. The community is already overburdened with community-based residential facilities and day care centers.

18. The record contains a petition of approximately 58 area residents in support of the application. The owner of 537 Newcomb Street, adjacent to the subject site, testified at the public hearing in support of the application. The testimony in support is generally summarized as follows:

- a. There have been no problems with the current operation of the facility in terms of noise or parking.
- b. The structure has been renovated and put to use, eliminating its previous condition as an eyesore and attraction for vagrants in the area.
- c. There have been no problems with loitering or other adverse impacts associated with the community residential facility across the street from the subject facility. There have been no problems with the coexistence of the two facilities in the past, so there should be no problem with the coexistence of the subject facility and the community residential facility across the street in the future.

19. The record contains a letter and petition of 18 signatures signed by area residents in opposition to the granting of the application. Several area residents testified in opposition to the application at the public hearing. The opposition is generally summarized as follows:

- a. The facility is not large enough to accommodate the increased number of students.
- b. There is not adequate staff to supervise the proposed number of children.
- c. The accommodation of 14-year old children at the facility makes it seem more like a community residential facility for children from Cedar Knoll or other institutional facilities.
- d. There are currently too many child development centers, community residential facilities, and other institutional facilities in the immediate area.
- e. Drop-off and pick-up of children will create congestion in an area where there is currently a problem with high-speed, high volume traffic on Oakwood and Newcomb

Streets, as well as the adjacent public alley, created by the area's proximity to I-295, Bolling Air Force Base/Naval Research Center and a nearby liquor store.

- f. The proposed business is inappropriate for a residential neighborhood.

FINDINGS OF FACT:

1. The Board finds that the proposed facility is capable of meeting all applicable code and licensing requirements. The facility is not likely to create objectionable traffic conditions or an unsafe condition for picking up and dropping off children. The facility provides the requisite number of on-site parking spaces. The outdoor play area is located and designed to prevent objectionable impacts due to noise or activity, or visual or otherwise objectionable conditions. No off-site play area is proposed to be used.

2. The Board finds that the facility is capable of meeting all applicable code and licensing requirements for the proposed capacity of 28 children. The Board notes that the DCRA determines the requisite size and staffing requirements and further that no certificate of occupancy would be issued for the proposed facility until all such criteria have been satisfied.

3. The Board finds that the applicant proposes to provide two on-site parking spaces at the rear of the site and, therefore, is in compliance with the requirements of the Zoning Regulations. The Board finds credible the applicant's testimony that there is currently little need for on-site parking because the majority of staff and children use public transportation or walk to the site.

4. The Board finds that there are no other community child development centers located within the subject square or within 1,000 feet of the site. The Zoning Regulations do not require the separation of community child development centers and community residential facilities.

5. The Board finds that the provision of services to children ranging in age from infants to 14 years is not prohibited. In addition, the provision of child care services to such a diverse age group does not constitute the provision of a community residential facility or outpatient treatment services. The provision of such services is regulated under other sections of the Zoning Regulations, and are subject to different code and licensing requirements.

6. The Board finds that the facility has existed at the subject site for some time without any evidence of adverse conditions related to noise or traffic. The proposed increase in the number of children will not have a major impact on traffic generation because the majority of children and staff come from the neighborhood. Drop-off and pick-up of children arriving by automobile would have minimal impacts on traffic patterns because parents utilize existing on-street parking areas and children are escorted to and from the facility by parents or staff members.

7. The establishment of a child development center for more than 15 children is permitted as a special exception in an R-5-A District. The Zoning Commission has determined that such use is appropriate for residentially zoned areas provided the applicant complies with the criteria set forth in Section 205 of the Zoning Regulations. The Board finds that the applicant has demonstrated such compliance and the facility will not be out of character with the surrounding residential area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires that the proposal meets the requirements set forth in 11 DCMR 205 and 3108.1, that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations, and that the relief will not tend to affect adversely the use of neighboring property. The Board concludes that the applicant has met the requisite burden of proof.

The Board further concludes that the special exception will be in harmony with the general intent and purpose of the Zoning Regulations and Map and, as hereinafter conditioned, will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that it has accorded the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is hereby ORDERD that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS.
2. The number of students shall not exceed 28. The number of staff shall not exceed four.
3. The hours of operation shall be between from 6:00 a.m. to 6:00 p.m., Monday through Friday.
4. A staff person shall assist in the drop-off and pick-up of children.

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VOTE: 3-0 (Maybelle Taylor Bennett, Paula L. Jewell and
Carrie L. Thornhill to grant; Angel F. Clarens and
Sheri M. Pruitt not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: _____

MAY 7 1993

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15755Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15755

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 7 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

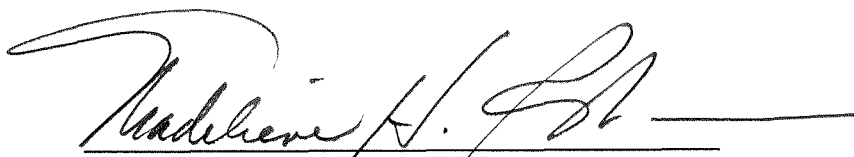
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MADELIENE H. ROBINSON
Director

DATE: MAY 7 1993

15755Att/bhs